

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA THOMAS NITKIN,

Plaintiff,

v.

D. RADU,

Defendants.

Case No. 2:23-cv-01837-JDP (PC)

ORDER

DENYING PLAINTIFF’S MOTION FOR
COUNSEL

ECF No. 27

Plaintiff is a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983. Pending is plaintiff’s motion for counsel, ECF No. 27, which defendant opposes, ECF No. 28.

Plaintiff does not have a constitutional right to appointed counsel, *see Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court lacks authority to require an attorney to represent plaintiff. *See Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa*, 490 U.S. 296, 298 (1989). The court can request the voluntary assistance of counsel. *See* 28 U.S.C. § 1915(e)(1) (“The court may request an attorney to represent any person unable to afford counsel”); *Rand*, 113 F.3d at 1525. But without a means to compensate counsel, the court will seek volunteer counsel only in exceptional circumstances. In determining whether such circumstances exist, “the district court must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks and citations omitted).


The appointment of counsel is not warranted. The allegations in the complaint are not

1 exceptionally complicated, and plaintiff has not demonstrated that he is likely to succeed on the
2 merits.

3 Accordingly, it is hereby ORDERED that plaintiff's motion for the appointment of
4 counsel, ECF No. 27, is denied without prejudice.

5
6 IT IS SO ORDERED.

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8 Dated: August 26, 2024


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE